

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Vitahorn Trading Co. Ltd., (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith Inc.,  
(Respondent)

Case Number: 00-05541

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Vitahorn Trading Co. Ltd., hereinafter referred to as "Claimant": John D. Kolenda, Esq., Kolenda & Loomie, LLP, New York, NY.

Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc., hereinafter referred to as "Respondent": Todd A. Zuckerbrod, Esq., Greenberg Traurig, P.A., West Palm Beach, FL. Previously represented by: Charles L. Henderson, Esq., Vice President and Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 8, 2000.

Opposition to Motion to Dismiss filed by Claimant on or about: July 22, 2002.

Claimant signed the Uniform Submission Agreement: November 27, 2000.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: May 8, 2001.

Respondent signed the Uniform Submission Agreement: April 17, 2001.

**CASE SUMMARY**

Claimant asserted the following cause of action: failure to advise Claimant of critical information concerning Claimant's investment in a USD Republic Nicaragua Loan Restructured Debt Zero Coupon Bond.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted, and is barred by the Statute of Limitation under Federal and State laws; the Statement of Claim fails to particularize facts establishing a legal theory under which Respondent could be held liable for the alleged damages; Claimant is barred from any recovery because it directed, authorized, consented to, acquiesced in, and/or ratified all transactions in the account with Respondent; Claimant made all investment decisions with regard to the accounts and any losses, which may have been suffered by

Claimant, were caused by the investment decisions made by Claimant and due to market conditions outside the control of Respondent; each transaction was expressly authorized and approved by Claimant prior to its execution; Respondent is not liable to Claimant in any amount because, at all times relevant herein, Respondent acted properly and in good faith with regard to Claimant's accounts; and all transactions were separately confirmed in writing and were reflected on monthly statements, and no timely complaint or objection about Claimant's account was ever made to Respondent by Claimant.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$80,000.00, plus applicable interest, costs, and attorneys' fees.

Respondent requested that the panel dismiss Claimant's Statement of Claim and award Respondent its costs and expenses incurred in the defense of this action.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The Panel denied Respondent's Motion to Dismiss.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$20,000.00 as compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$7,500.00 as attorneys' fees, according to Claimant's request.
3. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$ 225.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Oct. 1 & 2, 2002, adjournment by Claimant	= WAIVED
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#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: August 19, 2002	1 session

Three (3) Pre-hearing sessions with Panel x \$750.00	= \$2,250.00
Pre-hearing conferences: June 11, 2002	1 session
October 2, 2002	1 session
October 29, 2002	1 session

Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates: November 25, 2002	2 sessions
November 26, 2002	2 sessions

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Total Forum Fees	= \$5,700.00
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The Panel has assessed all of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Refund Due Claimant	= \$ 750.00

2. Respondent is solely liable for:

Member Fees	= \$3,100.00
<u>Forum Fees</u>	= \$5,700.00
<u>Total Fees</u>	= \$8,800.00
<u>Less payments</u>	= \$3,100.00
Balance Due NASD Dispute Resolution	= \$5,700.00

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

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**ARBITRATION PANEL**

Elliot R. Marvin, Esq.	-	Public Arbitrator, Presiding Chair
Kenneth Stewart	-	Public Arbitrator
Joseph D. Koziol	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Elliot R. Marvin

Elliot R. Marvin, Esq.  
Public Arbitrator, Presiding Chair

12-16-02

Signature Date

Kenneth Stewart  
Kenneth Stewart  
Public Arbitrator

Signature Date

Joseph D. Koziol  
Joseph D. Koziol  
Non-Public Arbitrator

Signature Date

December 31, 2002  
Date of Service (For NASD Dispute Resolution use only)

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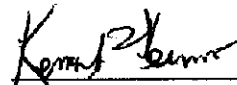
Elliot R. Marvin, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Kenneth Stewart  
Public Arbitrator

  
Signature Date 12/20/02

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Joseph D. Koziol  
Non-Public Arbitrator

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Signature Date

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Elliot R. Marvin, Esq.  
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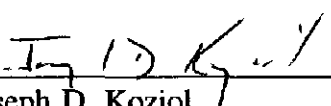
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Kenneth Stewart  
Public Arbitrator

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Signature Date

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Joseph D. Koziol  
Non-Public Arbitrator

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Signature Date

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